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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,824	01/15/2004	Carol L. Berger	29243.00	5510
22465	7590	12/13/2005	EXAMINER	
PITTS AND BRITTIAN P C			HOEY, ALISSA L	
P O BOX 51295			ART UNIT	
KNOXVILLE, TN 37950-1295			PAPER NUMBER	
			3765	

DATE MAILED: 12/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Thm

Office Action Summary	Application No. 10/757,824	Applicant(s) BERGER, CAROL L.	
	Examiner Alissa L. Hoey	Art Unit 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 November 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 16-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>01/15/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Figures 3 and 4 in the reply filed on 11/15/05 is acknowledged. The traversal is on the ground(s) that the examiner has not met her burden for establishing an appropriate election requirement. This is not found persuasive because as illustrated in the drawings and written in the specification there are different embodiments of the invention. If a generic independent claims is found to be allowable then all the claims will be rejoined in the case at time of allowance.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-14 and 16-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Crawford (US 4,008,350).

In regard to claim 1, Crawford teaches a foot covering for enclosing a forefoot, instep, heel and ankle while wearing footwear lacking an enclosed heel (10). A sock including a first fabric layer (12, 14) having respective toe, instep and heel base portions sized to enclose the wearer's foot inserted through a sock opening extended above the heel base portion (figure 1). The first fabric layer (12, 14) is composed of a thin elastic material and includes a transition seam (24) circumferentially disposed across the

instep portion of the first fabric layer (figures 1 and 2: column 2, lines 65-68). A second fabric material (18, 20) disposed to cover the wearer's instep, heel and ankle, the second fabric material having a leading edge attached to the transition seam (24) on the instep portion of the first fabric layer (figures 1 and 2). The second fabric material (18, 20) having a thickness greater than the first fabric layer and having an ankle portion extended a sufficient length above the heel base portion of the first fabric layer to encircle the wearer's ankle (figures 1 and 2). Whereby the thin first fabric (12, 14) encloses the wearer's forefoot and would inherently minimize stretching of footwear worn with the sock due to it's nylon construction. The second fabric material (18, 20) covers the wearer's instep, heel and ankle for warmth and is capable of being worn with footwear lacking an enclosed heel.

In regard to claim 2, Crawford teaches the first fabric layer (12, 14) including the toe, instep and heel base portions extending to encircle the foot and forming a substantially continuous sole portion of the thin elastic material (figure 1: column 2, lines 65-68). The thin elastic material being nylon would inherently have a low coefficient of friction thereby maximizing ease of insertion of the wearer's forefoot enclosed by the first fabric layer (12, 14) into footwear lacking an enclosed heel without stretching a forefoot portion of the footwear.

In regard to claim 3, Crawford teaches the transition seam (24) of the first fabric layer (12, 14) extending to circumferentially traverse an upper half of the instep portion of the first fabric layer (figure 1). The upper half of the instep portion encircling the

wearer's foot proximal of a medial arch, an instep and an outer side of the wearer's foot without extending along the sole portion of the first fabric layer (figure 1).

In regard to claim 4, Crawford teaches the first fabric layer (12, 14) includes a first material selected from the group consisting of a natural fibrous material interwoven with a synthetic elastic textile material (column 2, lines 65-68).

In regard to claim 5, Crawford teaches the second fabric material (18, 20) including the leading perimeter attached to the transition seam (24) of the first fabric layer (12, 14) along an upper portion of the wearer's instep (figures 1 and 2). The second fabric material (18, 20) extending distally from the leading perimeter to enclose the heel and ankle of the wearer's foot without enclosing a sole of the wearer's foot, thereby only the first fabric layer encloses the sole of the wearer's foot (figure 1).

In regard to claim 6, Crawford teaches the second fabric material (18, 20) including an elastic material interwoven with a second material selected from the group consisting of wool, cotton, silk, nylon, acrylic fibers, polyester fibers and polypropylene fibers (column 2, lines 65-68).

In regard to claim 7, Crawford teaches the second fabric material (18, 20) including a second layer of material disposed in overlying relation of the transition seam and extending to the heel base portion of the first fabric layer. The second layer material selected from the group consisting of wool, cotton, silk, nylon, acrylic fibers, polyesters, polypropylene fibers and elastic fibers (column 4, lines 57-64).

In regard to claim 8, Crawford teaches a foot covering (10) enclosing a wearer's foot and ankle that is capable of being worn with footwear lacking a heel enclosure

(figure 1). A tubular sock (10) including a first fabric layer (12, 14) composed of a thin resiliently stretchable material sized to enclose the wearer's foot within respective toe, forefoot, instep and heel portions (figure 1: column 2, lines 65-68). The first fabric layer (12, 14) having a transition seam (24) circumferentially disposed proximal of the instep portion (figures 1 and 2). A second fabric layer (18, 20) of material having a thickness greater than the first fabric layer having a leading edge attached in overlying orientation to the transition seam of the first fabric layer and having body and ankle portions sized to cover the heel and ankle of the wearer's foot (figures 1 and 2). The first fabric layer (12, 14) encloses the wearer's forefoot in thin nylon material which inherently minimizes stretching of footwear. The second fabric layer (18, 20) covers the wearer's heel and ankle for warmth and is capable of being worn with footwear lacking the heel enclosure.

In regard to claim 9, Crawford teaches the first fabric layer (12, 14) includes a thin stretchable material with a low coefficient of friction thereby maximizing ease of insertion of the wearer's forefoot enclosed by the first fabric layer into footwear lacking the heel enclosure without excessive stretching of a forefoot portion of the footwear by the wearer's forefoot covered by the first fabric layer (figure 1: column 2, lines 65-68).

In regard to claim 10, Crawford teaches the transition seam (24) of the first fabric layer (12, 14) extending circumferentially around a mid-portion of the sock (figure 1). The mid-portion encircling the wearer's foot proximal of a medial arch, an instep and an outer side of the wearer's foot (figure 1).

In regard to claim 11, Crawford teaches the thin stretchable material being selected from the group consisting of a natural fibrous material interwoven with a synthetic elastic textile material (column 2, lines 65-68).

In regard to claim 12, Crawford teaches the second fabric layer (18, 20) including a fabric material having a thick density and having the perimeter edge attached to the transition seam of the first fabric layer (figures 1 and 2). The second fabric layer (18, 20) extending distally from the transition seam (24) to enclosure lateral surfaces of the wearer's heel and ankle (figure 1).

In regard to claim 13, Crawford teaches the second fabric layer (18, 20) including material selected from the group consisting of wool, cotton, silk, nylon, acrylic fibers, polyester fibers, polypropylene fibers and elastic fibers (column 2, lines 65-68).

In regard to claim 14, Crawford teaches a sock (10) enclosing a wearer's foot and ankle and is capable of being worn with footwear lacking a heel enclosure. A tubular sock including a first fabric layer (12, 14) composed of a thin resiliently stretchable material sized to enclosure the wearer's foot in respective toe, forefoot, instep and heel portions (figure 1: column 2, lines 65-68). The first fabric layer (12, 14) having a transition seam (24) circumferentially disposed proximal of the instep portion (figures 1 and 2). A second fabric layer (18, 20) of material having a thickness greater than the first fabric layer (figure 2). The second fabric layer (18, 20) having a leading edge attached in overlying orientation to the transition seam (24) of the first fabric layer (12, 14) and having body and ankle portions sized to cover the heel and ankle of the wearer's foot (figures 1 and 2). The first fabric layer (12, 14) enclosing the wearer's

forefoot in thin nylon material which inherently minimizes stretching of footwear. The second fabric layer (18, 20) covers the wearer's heel and ankle for warmth and is capable of being worn with footwear lacking the heel enclosure.

In regard to claim 16, Crawford teaches the first fabric layer (12, 14) including the thin stretchable material having a low coefficient of friction thereby minimizing ease of insertion of the wearer's forefoot enclosed by the fabric layer into a forefoot portion of footwear lacking the heel enclosure without stretching of the forefoot portion of footwear by the wearer's forefoot covered by the first fabric layer (figure 1: column 2, lines 65-68).

In regard to claim 17, Crawford teaches the transition seam of the first fabric layer (12, 14) extending circumferentially around the instep portion of the sock (figure 1). The instep portion encircling the wearer's foot proximal of a medial arch, an instep and an outer side of the wearer's foot (figure 1).

In regard to claim 18, Crawford teaches the thin stretchable material being selected from the group consisting of a natural fibrous material interwoven with a synthetic elastic textile material (column 2, lines 65-68).

In regard to claim 19, Crawford teaches the second fabric layer (18, 20) including a fabric material having a thick density and having the leading edge attached to the transition seam of the first fabric layer (figure 2). The second fabric layer extends distally of the transition seam (24) to enclose lateral surfaces of the wearer's heel and ankle (figure 1 and 2).

In regard to claim 20, Crawford teaches the second fabric layer (18, 20) includes material selected from the group consisting of wool, cotton, silk, nylon, acrylic fibers, polyester fibers, polypropylene fibers and elastic fibers (column 2, lines 65-68).

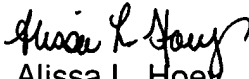
Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Horn, Chesebro, Safrit, Jones, Woodson, Throneburg, Ferrell, Pruit, Thiel, Gunn, Hudy, Marshall, Falwell, Adeli, Davies, Honeycutt, Solwey, Fujimoto, Singleton, Lancellotti, Tams and Kopp et al. are all cited to show closely related garment articles.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (571) 272-4985. The examiner can normally be reached on M-F (8:00-5:30) Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (571) 272-4983. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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